

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7124 OF 2005

Mrs.Preeti Charudatta Dedge .. Petitioner
Versus
Madhukar N. Raut .. Respondent

Mr.V.B.Rajure for petitioner
Mr.Pankaj Das i/b. Pankaj Rajmachikar for
respondent Nos.1 to 4
Mr.R.M.Pethe i/b. R.G.Ketkar for respondent Nos.
5 and 6.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th November 2007

P.C.

. Heard Mr.Rajure for petitioner, Mr.Das for respondent Nos. 1 to 4 and Mr.Pethe for respondent Nos. 5 and 6. Rest of the respondents are served. The petition has been dismissed against unserved respondents by order dated 8th January 2007. However, the contesting

parties viz., petitioners - original applicants and the original plaintiffs are represented and they have no objection to the matter being decided finally at this stage itself.

2. By consent of parties, the matter is taken up for hearing and disposed of finally.

3. Respondent Nos. 1 to 4 are original plaintiffs who have filed Special Civil Suit No.897 of 2005 before Civil Judge Senior Division Pune for declaration of their ownership and claiming that the sale deeds executed by Municipal Corporation of Pune with third parties are null and void, the award passed by the Arbitrator are binding upon the defendants as also other reliefs.

4. One of the properties is S.Nos.120-A, 120-B and 120/2 with corresponding final plot Nos.545 and S.Nos.133A and 133-B more

particularly described in para 1 of the plaint.

5. It is not necessary to make any detailed reference to the pleadings inasmuch as an application was preferred (Exh.19) by the present petitioners requesting that they be impleaded as party defendants Nos. 61 to 64 in the suit.

6. It was brought to the notice of the trial court that the plaintiff had filed an application for amendment and thereunder requested that some 44 persons be impleaded as defendants to the suit. All such persons have been impleaded as defendant Nos. 16 to 60. Compromise purshis were filed on 31st July 2005 between some of the defendants and plaintiffs to the suit.

7. However, the plaintiffs did not implead the present petitioners - applicants to the suit. In their submission, they are necessary parties.

8. Plaintiffs resisted this application and contended that whatever be the amount paid by the defendants who have compromised the claim, the applicants have no share therein as they have no share in the suit property itself. Consequently, they should not be impleaded.

9. The learned Judge has referred to the arguments of both sides in para 4 to 6 of the impugned order. He has observed that there is a will executed by Namdeo Raut in favour of plaintiff No.1 and therefore he alone is entitled to receive compensation. So also, there is a substantive suit filed by the present applicants for declaration of their share, partition and separate possession and this subject property is not included in that suit.

10. Mr.Rajure, during the course of arguments has pointed out that the suit property was not included only because a petition being Writ

Petition No.6426 of 1999 was pending in this Court. Mr.Pethe after taking instructions has pointed out that the said petition was subsequently withdrawn.

11. It may be that petitioners- applicants can now include the property covered in the petition in their suit but since parties to the litigation are common and the properties are claimed on the basis that they are ancestral, it would be just, fair and proper, in the peculiar facts of this case, if the present petitioners are also impleaded as party defendants to Special Civil Suit No.897 of 2005. Having perused the petition and the annexures so also the decisions relied upon, to my mind, the learned Judge was in error in rejecting the application. It is not as if the interest or claim as made for joinder has to be conclusively established at this stage. The Supreme Court has observed that it would be sufficient and adequate if some interest in the

property and the claim of the plaintiff in that behalf is prima facie established. That apart, these are properties which are being claimed on the basis of sale deeds executed by the Municipal Corporation. There is a family dispute. In such circumstances, in the peculiar facts of this case, I am satisfied that the requirements of Order I Rule 10(2) of the C.P.C. are satisfied. The petitioners deserve to be impleaded as party defendants in the suit.

12. Accordingly, Rule is made absolute. Order passed by the learned Trial Judge dated 18th August 2005 is quashed and set aside. Application Exh.19 preferred by the present petitioners is allowed and it is directed that the present petitioners be impleaded as party defendants. Amendments to be carried out within a period of two weeks from today. Upon receipt of amended plaint present petitioners to file their written statement. The suit, thereafter,

shall proceed in accordance with law. Petition
is allowed accordingly.

(S.C.Dharmadhikari, J)